UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 35

[Docket No. RM02-1-000]

Standardization of Generator Interconnection Agreements and Procedures

Notice of Proposed Rulemaking

(April 24, 2002)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations to require public utilities to file the standardized interconnection agreement and procedures we will adopt in this proceeding and to take and provide interconnection service under them. The agreement and procedures also would apply to any non-public utility that seeks voluntary compliance with jurisdictional transmission tariff reciprocity conditions.

DATES: Comments are due (45 days after publication in the FEDERAL REGISTER). Comments should not exceed 30 double-spaced pages and should include an executive summary.

ADDRESSES: Send comments to:

Office of the Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

FOR FURTHER INFORMATION CONTACT:

Patrick Rooney (Technical Information)
Office of Market, Tariffs and Rates
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426
(202) 501-5546

Roland Wentworth (Technical Information)
Office of Market, Tariffs and Rates
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426
(202) 208-1288

Michael G. Henry (Legal Information)
Office of the General Counsel
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426
(202) 208-0532

SUPPLEMENTARY INFORMATION:

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Standardization of Generator Interconnection Agreements and Procedures — Docket No. RM02-1-000

Notice of Proposed Rulemaking

(April 24, 2002)

I. INTRODUCTION

The electric power industry continues to be an industry in transition. Where the industry was once primarily the domain of large, vertically integrated utilities providing power at cost-based rates, companies selling unbundled power at rates set by competitive markets have become common. But balanced market rules and sufficient infrastructure continue to be essential for achieving a seamless nationwide power market that will provide customers with reasonably priced and reliable service.

The Commission continues to work to encourage fully competitive bulk power markets. The effort took its first big step with Order No. 888,[1] which required public utilities to provide others comparable access to their transmission lines, and continued

[1] Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. and Regs. ¶ 31,036 (1996), order on reh'g, Order No. 888-A, 62 Fed. Reg. 12,274 (March 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), order on reh'g, Order No. 888-B , 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C , 82 FERC ¶ 61,046 (1998), aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000), aff'd sub nom. New York v. FERC, 122 S.Ct. 1212 (2002) .

with Order No. 2000,[2] which began the process that will result in the development of a small number of Regional Transmission Organizations (RTOs). Where necessary, the Commission has taken action to complete the establishment of robust, seamless, competitive, wholesale electric markets. To this end, the Commission currently is preparing a rulemaking on Standard Market Design that will propose a reformed open access transmission tariff (OATT) that will be applicable to RTOs and other public utilities that own, operate, or control interstate transmission facilities.

While the subject of interconnection arose in the Order No. 888 rulemaking, no explicit reference to interconnection appeared in the pro forma tariff. Nevertheless, interconnection is a critical component of open access transmission service, and standard interconnection agreements and procedures are essential for providing the right incentives for both transmission providers and generators. Good interconnection standards and procedures will serve several important functions: they will encourage needed investment in infrastructure, limit opportunities for transmission providers to favor their own generation, and ease entry for competitors while ensuring efficient siting decisions.

To date, the Commission has addressed interconnection issues on a case-by-case basis. However, these issues have arisen with increasing frequency as competitive

[2]Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), aff'd sub nom. Public Util. Dist. No. 1 v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

markets have reacted to supply shortages. Generators seeking to build and interconnect their new energy resources with interstate transmission have been hindered by the lack of standardized interconnection procedures and agreements that would enable an expeditious and economic approval and construction process. As discussed below, it has become apparent that the case-by-case approach is insufficient to address these problems and there is a pressing need for a single, uniformly applicable interconnection agreement and set of procedures. Having a standardized set of procedures applicable to all interstate transmission facilities will expedite the development of new generation.

Our effort to address interconnection issues generically presents numerous challenges. The electric industry is faced with the competing need, on the one hand, for additional generation and transmission infrastructure that will ensure reliability and, on the other hand, for efficient price signals for appropriate siting. Efficiency considerations include the assignment of cost responsibility for system upgrades necessary to interconnect a new generator.

To properly implement an interconnection agreement and set of procedures, numerous issues must be resolved, among them: (1) how to ensure that accurate interconnection studies are produced in a timely fashion; (2) the extent to which any transmission data necessary for interconnection should be made transparent (i.e., available to all); (3) how to create the proper incentives for transmission providers to treat all generation comparably; (4) how to allocate equitably the costs and benefits of siting

generation; and (5) who should pay for the costs of system upgrades associated with interconnection, including the issue of whether the generator should be required to initially finance the cost of systems upgrades associated with interconnection.

The effort to generically address cost responsibility for system upgrades necessary to interconnect new generators is further complicated by prior treatment of these costs for existing Transmission Providers' system facilities that are necessary to interconnect their own generators to the transmission system. With the exception of the generator step-up transformers (GSUs), Transmission Providers' interconnection facility costs are usually recovered through the Transmission Providers' OATT rates, even when those facilities are radial or would not otherwise be necessary but for the Transmission Providers' generator. Treating Transmission Providers' own generation different than generation owned by others may put the other generators at a competitive disadvantage.

The proposed rule proposes a standard interconnection agreement (IA) and standard interconnection procedures (IP) that will be made part of existing and future OATTs. The Commission believes that these documents will ensure that reliability needs will be met while providing a reasonable balance between competing needs for uniformity and flexibility.

II. DISCUSSION

A. The Need for Generic Action

Order No. 888 set forth the Commission's open access principles as they apply to transmission service, but it did not directly address generator interconnections. Later, in Tennessee Power Company (Tennessee), 90 FERC ¶ 61,238 (2000), the Commission clarified that interconnection is an element of transmission service and must be offered under the terms of the pro forma tariff. In Tennessee we encouraged, but did not require,

transmission providers to revise their open access tariffs to include interconnection procedures, including standard interconnection agreements and specific criteria, procedures, milestones, and time lines for evaluating interconnection requests.[3]

Accordingly, a number of transmission providers have filed interconnection procedures as part of their pro forma tariffs.[4] Some of these providers have filed pro forma interconnection agreements; others have submitted only procedures explaining how interconnection requests will be processed.

However, many industry participants remain dissatisfied with existing interconnection policy and procedures. In a number of contexts, the Commission has received comments from both generators and transmission providers concerning existing interconnection policy and procedures.

Generators assert, among other things, that: (1) they have experienced difficulty securing interconnection without requesting delivery, (2) the treatment they receive is not comparable to the treatment received by the transmission provider's own generation, (3) system upgrade costs charged initially to generators are sometimes not related to the interconnection, (4) there are delays and uncertainty due to the lack of binding

---

[3] See, e.g., Commonwealth Edison Co., 91 FERC ¶ 61,083 (2000).

[4] See, e.g., American Electric Power Service Corp., 91 FERC ¶ 61,308 (2000), order denying reh'g and granting clarification, 94 FERC ¶ 61,166 (2001), order dismissing request for clarification, 95 FERC ¶ 61,130 (2001), appeal docketed sub nom. Tenaska, Inc. v. FERC, No. 01-1194 (D.C. Cir. April 23, 2001); Southwest Power Pool, Inc., 92 FERC ¶ 61,109 (2000); Carolina Power & Light Co., 93 FERC ¶ 61,032 (2000), reh'g denied, 94 FERC ¶ 61,165 (2001), appeal docketed sub nom. Tenaska, Inc. v. FERC, No. 01-1195 (D.C. Cir. April 23, 2001); Virginia Electric & Power Co., 93 FERC ¶ 61,307 (2000), order on clarification, 94 FERC ¶ 61,045 (2001), reh'g denied, 94 FERC ¶ 61,164 (2001), appeal docketed sub nom. Tenaska, Inc. v. FERC, No. 01-1196 (D.C. Cir. April 23, 2001); Consumers Energy Co., 93 FERC ¶ 61,339 (2000), order on reh'g and clarification, 94 FERC ¶ 61,230 (2001), order on clarification and denying reh'g, 95 FERC ¶ 61,131 (2001).

commitments and firm deadlines in the transmission providers' pro forma tariffs, and (5) there is a lack of transparency of transmission information needed to make an independent assessment of the impact of an interconnection request.

Transmission providers argue that they need: (1) minimum commitments from generators seeking to interconnect prior to performing studies to weed out those who will likely never interconnect, resulting in a more manageable and realistic queue, (2) assurance that their control area will benefit from, or at least not be burdened by, adding generators, particularly when the new generator seeks to locate on one system but serve load on another, and (3) improved communication between the generators and the loads they serve.

Interconnection plays a crucial role in bringing much-needed generation to the grid. We expect that a standard interconnection agreement and set of procedures will resolve these disputes and foster increased economic generation development and reliability through appropriate incentives for both transmission providers and generators. Accordingly, the Commission proposes to adopt a standard generator interconnection agreement and standard generator interconnection procedures. These will be required as amendments to the OATTs of all public utilities that own, operate, or control transmission facilities under the Federal Power Act (FPA).

B. Legal Authority

In fulfilling its responsibilities under FPA sections 205 and 206,[5] the Commission is required to address, and has the authority to remedy, undue discrimination. The Commission must ensure that the rates, contracts, and practices affecting jurisdictional transmission do not reflect an undue preference or advantage and are just and reasonable.

---

[5] 16 U.S.C. 824d, 824e (1994).

Additionally, as discussed in Order No. 888, there is a substantial body of case law that holds that the Commission's regulatory authority under the FPA "clearly carries with it the responsibility to consider, in appropriate circumstances, the anticompetitive effects of regulated aspects of interstate utility operations pursuant to [FPA] §§ 202 and 203, and under like directives contained in §§ 205, 206, and 207."[6] The Supreme Court recently affirmed the Commission's decision to exercise this authority and require non-discriminatory (comparable) open access as a remedy for undue discrimination.[7]

In Order No. 888, the record showed that public utilities owning or controlling jurisdictional transmission facilities had the incentive to engage in, and had engaged in, unduly discriminatory transmission practices.[8] The Commission also thoroughly discussed the legislative history and case law involving sections 205 and 206, and concluded that as a matter of law, it had the authority and responsibility to remedy the undue discrimination it had found by requiring mandatory open access, and that it could do so through a rulemaking on a generic, industry-wide basis.[9]

After issuing Order No. 888, the Commission identified interconnection as an element of transmission service that is required to be provided under the open access pro forma tariff.[10] Thus, the Commission may order generic interconnection terms and

---

[6]Gulf States Utils. Co. v. FPC, 411 U.S. 747, 758-59 (1973); see City of Huntingburg v. FPC, 498 F.2d 778, 783-84 (D.C. Cir. 1974) (noting Commission duty to consider the potential anticompetitive effects of a proposed interconnection agreement).

[7]New York v. FERC, 122 S.Ct. 1212 (2002) .

[8]Order No. 888 at 31,679-84; Order No. 888-A at 30,209-10.

[9]Order No. 888 at 31,668-73, 31,676-79; Order No. 888-A at 30,201-12; TAPS v. FERC, 225 F.3d 667, 687-88 (D.C. Cir. 2000).

[10]See Tennessee Power Co., 90 FERC ¶ 61,238 at 61,761, reh'g dismissed, 91

(continued...)

procedures pursuant to its authority to remedy undue discrimination and preferences under sections 205 and 206 of the FPA and further described in Order No. 888.

C. Commission Interconnection Case Law

The Commission's current interconnection policy informs this generic effort. The cases addressing interconnection have been preoccupied with drawing distinctions between interconnection and network facilities, and between interconnection service and transmission service. The Commission has developed a simple test for distinguishing interconnection from transmission facilities: network facilities include all facilities at or beyond the point where the customer or generator connects to the grid.[11] It follows that interconnection facilities are those found between the generator and the grid connection.

Regarding the services themselves, the Commission has clarified that a generator need not enter into a transmission service agreement to interconnect with a transmission system.[12] At the same time, interconnection service or an interconnection by itself does not confer any delivery rights from the generating facility to any points of delivery.[13] Thus, the Commission has distinguished the upgrades and services related to interconnection and those related to transmission when a customer secures the

---

[10](...continued)
FERC ¶ 61,271 (2000).

[11]Entergy Gulf States, Inc., 98 FERC ¶ 61,014 at 61,023, reh'g denied, 99 FERC ¶ ___ (2002); see Public Service Co. of Colorado, 59 FERC ¶ 61,311 (1992), reh'g denied, 62 FERC ¶ 61,013 at 61,061 (1993).

[12]Tennessee Power Co., 90 FERC ¶ 61,238 at 61,761 (2000).

[13]See Arizona Public Service Co., 94 FERC ¶ 61,027 at 61,076, order on reh'g, 94 FERC ¶ 61,267 (2001).

interconnection component of transmission service separately from the delivery component.[14]

D. Interconnection ANOPR

The Commission issued an Advance Notice of Proposed Rulemaking (ANOPR) on October 25, 2001.[15] As a point of departure, the ANOPR presented the Standard Generator Interconnection Agreement and Generation Interconnection Procedure of the Electric Reliability Council of Texas (ERCOT).[16] The Commission supplemented and modified the ERCOT documents with various "best practices" that were identified in Attachment A to that order. These "best practices" were based, in part, on generator interconnection agreements and procedures that have been approved by the Commission in past cases. The ANOPR also instructed the parties to assume that the Commission's current pricing policy, as described in an ANOPR attachment, would remain effective.

Commenters advocating a standard agreement and procedures other than the ERCOT model as supplemented and modified by the "best practices" in Attachment A were asked to specify in detail how their proposals differed and were superior to or more appropriate than the ERCOT-plus-best-practices model.

The Commission also initiated a consensus-making process for industry participants in which interested members of the electric industry, government and public had an opportunity to provide meaningful input.

---

[14]Nevada Power Co., 97 FERC ¶ 61,227 at 62,035-36 (2001), reh'g pending (Nevada Power).

[15]Standardizing Generator Interconnection Agreements Procedures, Advance Notice of Proposed Rulemaking, 66 Fed. Reg. 55,140 (Nov. 1, 2001), FERC Stats. & Regs. ¶ 35,540 (2001).

[16]The ERCOT agreement and procedures were attached to the ANOPR as Appendix A.

Public meetings of the stakeholders were conducted from November 2001 through January 2002 and included plenary sessions, private caucuses and drafting sessions. An interactive web site was established, which permitted any interested participant to view, post, and access documents, and post comments. These procedures made it possible for interested persons anywhere to participate. Public meetings generally were held at the Commission but also in Philadelphia and Denver in response to the National Association of Regulatory Utility Commissioner's (NARUC's) request that we hold some meetings outside of Washington, DC.

Consensus was largely reached by the participants on the scope of interconnection service, responsibility for facilities, and interconnection procedures and agreements. Two drafting groups developed standard IA and IP documents. These drafting groups, generally comprising representatives from each of the electric market segments, met intensively for three weeks in December 2001 and January 2002. Their efforts resulted in two documents that have largely shaped the text of this NOPR. We will refer to these documents as the Consensus IA and IP (while recognizing that a consensus was not reached on all matters).

The drafting groups reached agreements on many issues and successfully narrowed the areas of disagreement. The Consensus IA and IP present alternative positions for certain provisions. For others, there is a reasonable degree of consensus among the industry participants. No party, however, has endorsed all parts of either Consensus IA or IP, or even all parts of all alternative provisions proposed by the sector to which that party

belongs. In addition, some of the Consensus IA and IP provisions[17] have not been discussed by the Drafting Groups because of lack of time.

The consensus proposal was also the subject of a public meeting held on January 17-18, 2002.[18] Moreover, by February 1, 2002, more than 120 parties had filed comments on the ERCOT-plus-best-practices model as well as on the Consensus IA and IP. On the whole, the commenters support the Commission's efforts to standardize generator interconnection procedures and interconnection agreements to promote efficiency in energy markets. The commenters, however, also raise questions with respect to specific provisions in the interconnection agreements and procedures. We will not address the comments in detail in this NOPR, since we are requesting further comment, but they have informed our analysis of the issues.

E. ANOPR Comments on the IA and IP

Although the parties did not reach consensus on all provisions, the documents reflect substantial consensus among diverse interests. The Commission used these documents and the subsequent comments to create the proposed standardized IA and IP documents ("NOPR IA and IP"). Generally, the NOPR uses the Consensus IA and IP provisions where there was consensus. When the participants could not reach consensus on a particular issue and options were presented in the filed agreement and procedures, we sought to minimize barriers to entry of new generation as much as possible without increasing the risk of reliability problems. Where issues remained unresolved and no options were presented, the proposal generally adopts the ERCOT text. Also, the

---

[17] Sixteen of 31 articles of the Consensus IA had not been discussed by the IA Drafting Group.

[18] Notice of Staff Public Meeting, 67 Fed. Reg. 887 (Jan. 8, 2002).

proposal generally adopts the ERCOT text where the parties noted they had changed the text but had not completed their discussions before filing the documents.

With certain exceptions, the majority of Generators and Transmission Providers endorse the inclusion of two products (Energy and Network Resource Interconnection Services[19]) in the Consensus IA and IP. Likewise, most Generators and Transmission Providers agree in concept with the principles governing queuing and restudy provisions set forth in the Consensus IA and IP.

While the Generators and Transmission Providers agree that the differences between the parties have narrowed significantly, disagreements remain. The following section discusses several of the disagreements and how we decided what to propose in the NOPR IA and IP.

1. Coordination with affected third party systems (IP § 3.5)

The interconnection of a generator may affect other systems. This requires the Transmission Provider to coordinate studies and upgrades to accommodate the interconnection request. Transmission Providers suggest language that requires only reasonable efforts to coordinate with affected third-party systems. Generators generally want transmission providers and affected third parties to be responsible for coordinating and performing all necessary studies and upgrades. Generators also do not want to condition interconnection on the completion of third-party upgrades.

---

[19]Energy Resource Interconnection Service allows the Generator to connect its Facility to the Transmission System, thereby becoming eligible to deliver output using existing firm or non-firm capacity on an "as available" basis. IA 4.1.1.1. Network Resource Interconnection Service allows the Generator to connect its Facility in a manner comparable to that in which the Transmission Provider integrates its generating facilities to service native load or, in an independent system operator (ISO) or RTO with market-based congestion management, as in the same manner as other Network Resources. IA 4.1.2.1.

The NOPR IP adopts the Generators' position. We believe that their approach reduces unnecessary delay by recognizing that where multiple transmission systems are affected, coordination studies and upgrades must be performed for the successful completion of a new generation project. We agree with the Generators that the alternative would likely delay the completion of the interconnection project through an iterative or sequential study process. Also, as we explicitly stated in Nevada Power, third-party interconnection studies and network upgrades do not apply to interconnection but to transmission delivery service.[20] So, while the generator can get interconnected to the Transmission Provider's system, it cannot deliver or may not be able to deliver all of its power for the facility until the third-party upgrades are completed. Finally, by mandating that the affected third party coordinate interconnection study and network upgrades and additional processes with the Transmission Provider, it gives Transmission Providers another incentive to move quickly to become RTOs because RTO structure requires greater regional coordination and a move to single system planning.

2. Interconnection Construction Acceleration (IP § 12.3)

Under certain circumstances, Transmission Providers may wish to accelerate construction of network facilities either on their own initiative or to accommodate another generator's request to do so. Transmission Providers want the ability to accelerate the construction of network upgrades without having to consult with the generator who will be charged for the upgrade. Generators agree that acceleration should be permitted and generally agree with paying for accelerated upgrades as long as they either receive credits or are reimbursed by the generator requesting the accelerated construction. But Generators maintain that the Transmission Provider should bear the costs of any

[20]Nevada Power Co., 97 FERC ¶ 61,227 at 62,035-36 (2001), reh'g pending.

accelerated construction it undertakes for its own benefit or for the benefit of another generator without consultation with the Generator.

The NOPR IP adopts the Generators' proposal. The Commission believes that it is important to allow Transmission Providers to accelerate the construction of network upgrades. The approach offered by the Generators offers generators fair compensation (in the form of transmission credits) for costs that will be repaid by the Transmission Provider once the Transmission Provider recovers them from the generator requesting accelerated construction. It does not appear reasonable that, where a generator is expected to pay for construction of facilities, the Transmission Provider could accelerate the timing and therefore the need for financing without prior consultation.

3. Small Generator Interconnection Issues (IP § 14; IP Appendix 6)

Small Generators want the ability to interconnect without having to pay the cost of the interconnection studies and upgrades or having to deal with local and state regulatory requirements that may hinder development. NARUC, state regulatory agencies and certain Transmission Providers request that the Commission state unequivocally that states have jurisdiction over distribution systems and clarify that the Commission's treatment of Small Generators applies only to transmission.

The actions proposed here are well within the authority granted to the Commission in the FPA; it is clear that the FPA grants federal jurisdiction over transmission by a public utility in interstate commerce and when public utilities make sales for resale in interstate commerce.[21] Within this jurisdiction, we propose that the NOPR IA and IP will apply only when a generator interconnects to the Transmission Provider's transmission

[21] See New York v. FERC, 122 S.Ct. 1212 (2002).

system or makes wholesale sales in interstate commerce at either the transmission or distribution voltage level. [22]

Regarding the request to exempt Small Generators from paying for study and upgrade costs, we are not inclined to adopt this proposal. Rather, we propose that Small Generators should be responsible for all studies and upgrades needed to accommodate their facilities. The utilities' other transmission customers should not have to subsidize Small Generators. However, we propose an accelerated procedure for Small Generators and system studies limited in scope (i.e., limited only to the immediate vicinity of the Small Generator's interconnection) and that the Transmission Provider use existing studies to the extent possible at no cost to the Small Generator.

4. Regional Differences

The consensus documents require all affected entities to adopt standard interconnection procedures and agreements regardless of the geographical location or configuration of the electric systems. Yet there is significant disagreement about how best to incorporate regional differences. Transmission Providers, state regulators and others contend that the IA and IP documents must acknowledge regional differences (such as system operations, reliability, environmental concerns, etc.). Florida Public Service Commission, for example, says that the IP and IA must take into account the special protective relaying schemes needed by Florida utilities to ensure that the transmission separation unique to Florida due to its peninsular nature is minimized.

---

[22] For example, the IA and IP would apply if the Generator interconnects to the Transmission Provider's transmission system (regardless of whether the output is being sold at wholesale or retail) or if the Generator interconnects to the Transmission Provider's distribution system and the output is being sold at wholesale. However, the IA and IP would not apply if the Generator connects to a distribution system but has not yet proposed to sell the output at wholesale.

Generators suggest that these types of regional differences can be addressed when the compliance filings are made after the Final Rule is issued.

While the Transmission Providers, state regulators and others may have raised legitimate concerns regarding regional differences, they have not specifically identified the modifications that need to be made to the IA and IP to accommodate these differences. In some instances, parties have raised concerns that are outside the standard terms and conditions of the NOPR IA and IP. The Commission proposes to adopt the approach used in Order No. 888: however, if commenters identify legitimate concerns about a need for regional variations in specific provisions in the NOPR IA and IP, the Commission will consider revisions to these provisions that would permit regional variations as appropriate.[23]

5. Tax Indemnification Provisions (IA § 5.16)

IRS Notices 2001-82 and 88-129 suggest that contributions by Generators to Transmission Providers in connection with interconnection and network facility construction are non-taxable. Consistent with these IRS notices, the draft tax provisions in the NOPR treat the funding as a non-taxable event. The IRS is moving to further address these and other tax indemnification issues raised in the ANOPR proceeding.

Transmission Providers are concerned that the IRS Notices do not cover either transactions between a Generator and certain Transmission Providers or transmission credits for network upgrade costs. Accordingly, Transmission Providers want gross-up or secured indemnity from generators until the IRS rules that such items are not taxable.

---

[23] In Order No. 888, the Commission stated that it would allow parties to use regional differences to justify changes to certain tariff provisions when the proposed alternative provision is "reasonable, generally accepted in the region, and consistently adhered to by the transmission provider." Order No. 888 at 31,770.

Generators argue that the IA tax provisions were negotiated by tax professionals who are familiar with and represent all sides of the electric power industry, including the Transmission Providers. They ask the Commission to either accept the tax section in its entirety or eliminate it from the IA.

The NOPR IA leaves section 5.14 in place, but adds a clarification that provides Transmission Providers with full reimbursement in the future if the IRS determines that these type of events are taxable.

6. Parties to the Agreement

The participants disagree as to the appropriate party or counter-party to the IA. Transmission Providers generally believe that the Transmission Owner, whether or not it is also the Transmission Provider, should be the sole signatory to the IA. Generators believe in general that, if the Transmission Owner and Transmission Provider are separate entities, both must be sign the IA.

The Commission proposes that the Transmission Provider be required to sign the agreement because this service will be provided under the Transmission Provider's OATT. Moreover, no one disputes that the Transmission Owner must sign an agreement with the Generator, and it would be a waste of resources for the Transmission Provider and Generator to have to enter into separate agreements when one agreement would suffice. Accordingly, the Commission proposes that the Transmission Provider, and, to the extent necessary, the Transmission Owner, must become signatories to the IA.

7. Liquidated damages (IA § 5.1, IP § 13.5)

Liquidated Damages provisions appear in both the IA and the IP. The liquidated damages provision in the Consensus IA is applicable if a Generator chooses the construction option described in IA section 5.1.B. Under this option, if a Transmission

Provider fails to complete the interconnection facility by the in-service date or the network upgrades by the commercial operation date, the Transmission Provider shall pay the Generator liquidated damages. Liquidated damages would be limited to 0.5% per day of the actual aggregate costs of the interconnection facilities or network upgrades for which the Transmission Provider remains responsible, and such total shall not exceed 20% of the Transmission Provider's actual costs. The participants reached agreement on this provision in the Consensus IA.

But the participants disagree about the liquidated damages provision in the IP. The Generators propose a provision that would make Transmission Providers pay liquidated damages if the Transmission Provider fails to meet any of its obligations in the IP and does not remedy the failures within 15 business days. Liquidated damages would be 1% of the actual costs of the applicable study cost per day, but would not exceed 50% of the actual cost of the applicable study. Also, upon expiration of the remedy period, the Transmission Provider would refund any deposit amount for the applicable study that the Generator had paid in excess of actual reasonably incurred study costs.

Several transmission owners object to the Generators' proposal, stating that a Transmission Owner derives no profit from performing studies under the IP; it recovers only actual study costs. They reason that it is unfair to force a Transmission Owner to assume the risk of liquidated damages where there is no concomitant financial benefit. The National Rural Electric Cooperative Association and the American Public Power Association argue that the liquidated damages would be especially burdensome on cooperatives and public power providers because of their limited resources. They propose a reciprocal liquidated damages provision for generators applicable to the milestones that a generator must satisfy. The Arizona PSC argues that transmission

providers should not be liable for delay because factors beyond their control could affect the schedule. It also argues that the Commission lacks the authority under the FPA to impose damages and argues that the liquidated damages provision is an assessment for nonperformance.

Because the participants reached consensus on the liquidated damages provision in the consensus IA, the Commission has included this provision in the NOPR IA. As for the IP, the Commission will leave the Generators' liquidated damages language in the NOPR IP. The Commission did not allow for liquidated damages in the OATT provisions related to facilities studies.[24] Nevertheless, we invite comments on whether the Commission should make the Generator's proposed provision a part of the IP in the final rule.

F. Pricing Underlying the Consensus Documents

For purposes of negotiating the IA and IP, participants were directed to assume our current interconnection pricing policy (see Attachment B to the ANOPR). While the Commission indicated that pricing would be addressed in a subsequent rulemaking, the ANOPR participants have argued forcefully that the interconnection products, terms, and conditions cannot be divorced from the underlying pricing that was assumed during negotiations. Nearly all participants have cautioned that the consensus documents will need to be modified if the Commission changes its current pricing policy.

---

[24] Section 19.4 of the pro forma OATT requires Transmission Providers to use due diligence to complete a required facilities study within a 60-day period. If the Transmission Provider is unable to do so, it must notify the Transmission Customer, provide an estimate of the time needed to complete the study, and explain why the additional time is necessary. When completed, the study must include a description of the Generator's share of the cost of the required upgrade, and the time required to complete such construction and initiate the requested service.

As a result, the interconnection terms and conditions before us go hand-in-hand with pricing. We have, therefore, concluded that interconnection pricing is best addressed at this time. The NOPR IA and IP reflect our existing pricing policies, and we invite comment on whether those existing policies should be retained. In addition, we provide clarification below on the issue of how interconnection and transmission pricing must be consistent and comparable.

1. Commission's Pricing Policies

a. Network Facilities Cannot be Directly Assigned

The Commission has long held that the transmission grid is a single piece of equipment whose use can be priced on an average or incremental investment cost basis, but not by way of direct assignment. These standards are best described in Public Service Company of Colorado (PSCO),[25] where the Commission described its then new policy of allowing use of the grid to be priced either on an incremental cost basis or on the traditional average or rolled-in cost basis:

> The Commission has long held that an integrated transmission grid is a cohesive network moving energy in bulk. Because the grid operates as a single piece of equipment, the Commission has consistently priced transmission service based on the cost of the grid as a whole. The Commission has rejected the direct cost assignment of grid facilities even if the grid facilities would not be installed but for a particular customer's service. The Commission has reasoned that, even if a customer can be said to have caused the addition of a grid facility, the addition represents a

[25] 59 FERC ¶ 61,311 (1992), reh'g denied, 62 FERC ¶ 61,013 at 61,061 (1993) (footnotes omitted).

> system expansion used by and benefitting all users due to the integrated nature of the grid. Recognizing that the grid is a cohesive network in a dynamic state of development, the Commission has even included remote facilities in the grid on the ground that they were merely the first segment of what would eventually be a network loop. The Commission has reserved direct assignments for only those transmission facilities that fall into what we have referred to as an "exceptional category" consisting of radials which are so isolated from the grid that they are and will remain non-integrated.
>
> Nothing in the Commission's new pricing policy changes or undermines these fundamental premises. There continues to be only one service – service over the entire grid – and both native load and third party customers "use" the entire grid, including any expansion. Similarly, both native load and third party customers benefit from integrated grid upgrades.
>
> The only change in our new policy is how to price grid service. The "but for" test continues to identify the additions to the grid which constitute the incremental cost of expanding the grid to serve the transmission customer. While we now permit utilities to price on the basis of this incremental grid cost, we are not directly assigning grid additions. We are not dismembering the grid or directly assigning its newest components.

At that time, service was still predominantly bundled (generation and transmission) and, therefore, the functionalization of costs between generation and transmission was not an

issue. As a result, all transmission facilities, including generation interconnection facilities, were treated as part of the network.

b. Facilities Reassigned From Transmission to Generation

In 1996, the Commission issued Order No. 888, which required the unbundling of transmission and wholesale generation services. Prior to Order No. 888, when utilities were providing primarily a bundled generation and transmission service, the precise functionalization of costs as generation or transmission was not critical, as noted above. However, since unbundling, the Commission has determined that the cost of generation step-up transformers (GSUs) are part of the generation function rather than the transmission function.[26] In KU, we found that GSUs are used in providing generation services, and that the costs of these facilities should be charged to the customers using the generating facilities. Thus, we excluded the cost of GSUs from the Transmission Provider's transmission rates, reasoning that a more accurate method of cost recovery is to assign the costs of each GSU to the generator to which it is connected.

c. Interconnection Facilities Considered Direct Assignment Facilities Rather Than Network Facilities

As merchant generation took hold, entities sought interconnection before they had lined up specific load serving entities to purchase the output of the unit. Merchant generators, therefore, had a need to interconnect before they were ready to sign up for the delivery component of transmission service.

---

[26]Kentucky Utilities Company, 85 FERC ¶ 61,274 at 62,111 (1998) (KU). A GSU is located adjacent to a generating plant and increases the voltage of the plant output before it reaches the transmission network.

In Tennessee Power Company (Tennessee),[27] the Commission clarified that interconnection is a component of transmission service, that the interconnection component must be offered under the terms of the pro forma tariff, and that this right is without regard to whether the interconnection component of transmission service is requested along with or before the delivery component of transmission service. In order to interconnect to the grid, merchant generators agreed to finance all necessary construction costs. It was at this time that Transmission Providers began to request that the cost of interconnection facilities (i.e., all facilities needed to connect the generator to the network) be treated as sole use facilities and be directly assigned, rather than included as part of the network. In addition, some network upgrade costs were now being assessed prior to transmission delivery service. A choice between pricing the use of the network at its average or incremental cost could no longer be made because the average cost was a function of the rolled-in rate for a delivery service that had not as yet been requested. Therefore, the Commission allowed the Transmission Provider to assess an incremental cost rate at the time of interconnection (i.e., the customer pays the cost of the network upgrade that would not have been incurred but for its service request) but required that customers receive credits for the cost of the network upgrades once the delivery component of transmission service begins. The Commission instituted this "crediting" policy to ensure that customers are not charged twice for the use of the network. Later, in American Electric Power Service Corp.,[28] the Commission required Transmission Providers to include in the Transmission Credits interest on the monies paid. In certain ISOs with comprehensive congestion management, the Commission

[27] 90 FERC ¶ 61,238 at 61,761, reh'g dismissed, 91 FERC ¶ 61,271 (2000).

[28] 97 FERC ¶ 61,098 at 61,530-31 (2001).

does not require credits for network upgrades that increase the transfer capability; the customer (generator) instead receives comparable compensation in the form of price protection from the cost effects of congestion.

d. Summary

In Consumers Energy Company,[29] and Entergy Gulf States, Inc.,[30] the Commission underscored that the grid is a single piece of equipment from which only sole use facilities are excluded; that Commission policy prohibits the permanent direct assignment of network facilities; that the prohibition against the direct assignment of network facilities is without regard as to the purpose of the upgrade (e.g., to relieve overloads, to remedy stability and short circuit problems, to maintain reliability, or to provide protection and service restoration); and that all facilities at or beyond the point where the customer (or generator) connects to the grid are network facilities.

2. Interconnection and Transmission Pricing Must Be Comparable and Consistent

In Southern Company Services, Inc. (Southern), the company proposed to continue to treat the cost of interconnection facilities (meaning facilities on the generator's side of the point of interconnection) for its own generators as part of the network while directly assigning the cost of the same type of facilities to its competitors' generators.[31] Southern raised the issue of how to ensure comparability with interconnection and transmission pricing. Recognizing the need to address this issue on a generic basis, the Commission made Southern subject to the outcome of this rulemaking.

---

[29] 95 FERC ¶ 61,233, order on reh'g, 96 FERC ¶ 61,132 (2001).

[30] 98 FERC ¶ 61,014, reh'g denied, 99 FERC ¶ _____ (2002).

[31] 98 FERC ¶ 61,328 (2002).

The NOPR IA and IP reflect the Commission's current interconnection pricing policy and we have invited comments on whether that policy should be retained. We will require that all transmission rates be designed in a manner that is consistent with whatever interconnection pricing is approved. To the extent our current interconnection pricing is adopted, all generation interconnection facilities, not just generator step-up transformers, must be removed from the transmission charge and directly assigned as sole use facilities. Consistent with our current pricing of generator step-up transformers, this sends a more accurate price signal by assigning the cost of interconnection facilities to the generation customers using them.

If commenters wish to propose generation interconnection pricing that differs from the pricing we propose herein, they must identify and explain to what extent the NOPR IA and IP must be changed accordingly as well as how they will ensure that the transmission rates are designed on a consistent and comparable basis.

3. Pricing for Independent Entities

After the release of the ANOPR the Commission announced its intention to reform public utility transmission tariffs using a standard market design (SMD) in Docket RM01-12. We seek comment on appropriate generator interconnection pricing in this docket consistent with the locational pricing methodology in the SMD proceeding. We note that in regions that use locational pricing, ISOs assess the cost of any new network facilities based on which network facilities would not be in the transmission expansion plan but for the interconnecting generator (this is referred to as the "but for" test). In this case, the generator typically receives transmission rights in return for the capacity that is created, which may take on value if the facility becomes congested in the future. This pricing method has only been allowed in regions where the transmission provider is independent

of market participants. This is because of our concern that certain aspects of this method such as the congestion price signals to which the generator responds in asking for an upgrade, the determination of which generators in the queue should be responsible for which facilities, the cost of the facilities, and the assumptions underlying the power flow analysis, can be subjective. As a result, a transmission provider that is not an independent entity would have the ability and the incentive to exploit this subjectivity to its own advantage if it is able to assess the costs of network upgrades to the interconnecting generator. To address this potential problem, we invite comment on whether the Commission should accept an approach that departs from current Commission policy of providing transmission credits, and will consider alternative proposals as long as we can be assured that these cost causation determinations are made on an objective and non-discriminatory basis by an independent entity such as an RTO.

G. Other issues

1. Force majeure and other liability issues

The ERCOT Standard Generation Interconnection Agreement contains several provisions addressing liability and a force majeure exception to liability. None of these provisions were reviewed and adopted by the IA drafting group, but they were filed as part of the Consensus IA. In the discussion below, we look to similar provisions in the OATT for comparison.

a. Insurance

At the outset, we note that Article 9 in the ERCOT Agreement (Article 13 in the Consensus IA) requires each party to the agreement to maintain certain minimum insurance coverages. The OATT contains no provision requiring insurance coverage.

b. Indemnification

Indemnification is the act of compensating another for a loss suffered due to a third party's act or default.[32] The ERCOT Agreement and the Consensus IA contain different indemnity provisions. The ERCOT provision (section 10.15, which incorporates by reference a Texas Public Utility Commission rule, PUCT Rule 25.202(b)(2)) does not extend indemnity protection to cases of gross negligence or intentional wrongdoing, while the Consensus IA (section 19.1) does not extend indemnity protection to cases of ordinary negligence or willful misconduct. Also, the ERCOT provision makes the legal costs of prosecuting or defending a claim by a third person an eligible liability, but does not allow indemnity protection from such costs when the action is between the parties to the agreement, while the Consensus IA draws no such distinction and makes all reasonable legal costs recoverable. The Consensus IA also includes indemnity procedures that describe how a party may pursue indemnity claims, and the procedure for doing so.

The indemnification provision in the OATT (section 10.2) indemnifies the transmission provider for legal costs due to claims by third persons arising from performance of its obligations under the OATT, and does not explicitly allow indemnification for disputes arising over enforcement of this provision. Indemnification does not extend to cases of ordinary negligence and intentional wrongdoing by the Transmission Provider.

[32]Black's Law Dictionary 772 (7th ed. 1999).

c. Consequential Damages

Consequential damages are losses that flow indirectly from an injurious act rather than directly and immediately.[33] The ERCOT Agreement's consequential damages provision (section 10.16, which is found in section 19.6 of the Consensus IA) excuses liability for losses or costs for any special, indirect, incidental, consequential, or punitive damages. Liability for damages under another agreement will not be considered special, indirect, or consequential damages under this provision.

The OATT protects a transmission provider from consequential damages and indirect damage claims by third parties through indemnification except in cases of negligence or intentional wrongdoing by the transmission provider. No other protection against consequential damages appears in the OATT. In Order No. 888-A, the Commission stated that it saw no need to extend this protection, and noted that "liability is a separate issue from indemnification, and that nothing in these provisions precludes transmission providers or customers from relying, when and where such law is applicable, on the protection of statutes or other law protecting parties from consequential or indirect damages."[34]

d. Force Majeure

Nonperformance due to a force majeure event shall not be considered default. The Consensus IA (Article 17) adopts the ERCOT force majeure provision (section 10.5), which uses a standard laundry list of causes that are considered "beyond the reasonable control" of the party claiming force majeure. Fault and negligence are still exceptions, but the force majeure event must "materially prevent or impair" the performance of the

---

[33] Id. at 394.

[34] Order No. 888-A at 30,302.

claimant's obligations. Article 17 also explains the procedure for making a claim of force majeure. A party affected shall exercise "due diligence" to remove its inability to meet its obligations with "reasonable dispatch," but this does not include accepting unsatisfactory provisions that would resolve a labor dispute.

The force majeure provision in the OATT (section 10.1) also adopts a standard laundry list of causes but excludes acts of negligence or intentional wrongdoing (without specifying whose negligence or intentional wrongdoing). Nonperformance due to a force majeure event is not considered default, but parties should make all reasonable efforts to perform their obligations under the tariff.

e. Discussion

The Commission proposes adopting the protections afforded in the OATT, but making them applicable to both the transmission provider and the interconnection customer. Order No. 888 and its progeny clarified that the pro forma tariff was not intended to address liability issues beyond indemnification and force majeure,[35] and we intend to apply that principle here as well.[36] Accordingly, we have incorporated the OATT provisions into the NOPR IA, and eliminated the insurance requirements. Nevertheless, we invite comment on the Commission's proposed approach and ask

[35]Order No. 888-A at 30,301-02; Order No. 888-B at 62,080-81.

[36]See, e.g., Delmarva Power & Light Co., 88 FERC ¶ 61,247 at 61,786, reh'g dismissed, 89 FERC ¶ 61,170 (1999) (rejecting two parties' competing attempts to address liability issues in their interconnection agreement, and instructing the parties to instead use the indemnification and force majeure provisions from the OATT); but see Commonwealth Edison Co., 92 FERC ¶ 61,175 at 61,620 (2000) (noting that limitation of liability provisions inconsistent with those in the pro forma OATT are acceptable when the individual IA demonstrates that a different limitation of liability provision was part of the specific bargain); Cinergy Services, Inc., 99 FERC ¶ 61,025 (2002).

commenters to address the relative merits of the alternative ERCOT and Consensus IA provisions.

2. Reciprocity

Order No. 888 required that transmission tariffs contain a reciprocity provision[37] applicable to any customer, including a non-public utility, that owns, controls or operates interstate transmission facilities and that takes service under the open access tariff, and any affiliates of the customer that own, control or operate interstate transmission facilities. The purpose of this provision was to ensure that a public utility offering transmission access to others could obtain similar service from its transmission customers, including non-public utilities. This provision further ensures that any non-public utility that wishes to take advantage of the open access transmission provided by public utilities must offer comparable transmission service in return. They may do so either on a utility-specific basis or through a Commission-approved "reciprocity OATT" on file with the Commission. Since we found in Tennessee that interconnection service is an element of transmission service that must be offered under the terms of the Transmission Provider's OATT, and the IP and IA will be added to the OATT, we find that interconnection service also will be subject to this reciprocity requirement. Although we do not have direct authority to require non-public utilities to make interconnection service generally available, we have the ability and the obligation to ensure that all aspects of open access transmission are as widely available as possible and that the implementation of this rulemaking does not result in competitive disadvantage to public utilities. Thus, we propose that the reciprocity provision apply to interconnection as well, and that any non-public utility that wishes either to take advantage of, or to continue to

[37] Order No. 888 at 31,760-63; Order No. 888-A at 30,281-87.

take advantage of, open access on a public utility's transmission system, must adopt the IA and IP into its own reciprocity service.

H. Summary of NOPR IA and IP

1. Standard Generator Interconnection and Operating Agreement

Article 1. Definitions - This Article contains the definitions of terms used in the Agreement. Capitalized terms in the summary are defined in the Agreement.

Article 2. Effective Date, Term and Termination - The term of the Agreement will be 10 years, or longer by request, and will be automatically renewed each successive year thereafter. Termination procedures are described. Parties retain the right to seek unilateral modification of this Agreement under FPA sections 205 and 206.

Article 3. Regulatory Filings - The Transmission Provider will be responsible for filing the document with the appropriate Governmental Authority. Procedures for confidential treatment of Generator information are described.

Article 4. Scope of Service - This Article describes the two kinds of interconnection products available.[38] Energy Resource (ER) Interconnection Service allows the Generator to connect its Facility to the Transmission System and be eligible to deliver output using existing firm or non-firm capacity on an "as available" basis. Network Resource (NR) Interconnection Service allows the Generator to connect its Facility in a manner comparable to that in which the Transmission Provider integrates its generating facilities to service native load or, in an ISO or RTO with market-based congestion management, in the same manner as other Network Resources. Neither ER nor NR Interconnection conveys any right to transmission delivery service, nor does the

[38]This proposal was developed in advance of the standard market design proposal that the Commission will issue in RM01-12-000.

Agreement constitute a request for transmission delivery service. The studies for each service are described, as are the implications of the Generator's eligibility for delivery under each service.

Article 5. Interconnection Facilities Engineering, Procurement, and Construction - This Article describes the procedures for designing, procuring, and constructing the Transmission Provider Interconnection Facilities/Network Upgrades and the Generator Interconnection Facilities. Construction options, rights, and responsibilities are also presented. Generators will not be responsible for costs of modifications made to the Transmission Provider Interconnection Facilities or the Transmission System to facilitate interconnection of a third party or to provide transmission service under the Transmission's Provider Tariff. The Parties intend that all payments or transfers by the Generator to the Transmission Provider for installation and upgrades shall be nontaxable. If these payments ultimately are found to be taxable, the Generator shall indemnify the Transmission Provider.

Article 6. Testing and Inspection - Both Parties will conduct facility testing before the Commercial Operation Date and make any necessary modifications. The Generator shall bear the cost of these tests and modifications. After the Commercial Operation Date, each Party shall conduct routine inspection and testing of its facility at its own expense.

Article 7. Metering - The Transmission Provider will install, own, operate and maintain Metering Equipment at the Point of Interconnection, but the Generator shall bear all reasonable documented costs. The Article also describes Metering Equipment standards and testing requirements.

Article 8. Communication - The Article describes the necessary operating communications and dedicated data circuits between the Parties and the cost and maintenance responsibility for such equipment.

Article 9. Operations - The Generator and Transmission Provider should operate their respective facilities and equipment in a safe and reliable manner. This Article also describes Reactive Power requirements. In the event the Parties agree or are required to allow third parties to use any portion of the Transmission Provider Interconnection Facilities, the Generator will be compensated for capital expenses incurred based on the pro rata use of the Interconnection Facilities by the Transmission Provider, all third-party users, and the Generator.

Article 10. Maintenance - The Generator will be responsible for all reasonable expenses associated with owning, operating and maintaining Generator and Transmission Provider Interconnection Facilities (except for operations and maintenance expenses associated with modifications necessary for providing service to a third party that pays for such expenses).

Article 11. Performance Obligation - The Article describes the security and payment obligations of the Generator and Transmission Provider with respect to facility construction and Transmission Provider requests for service from the Generator. Section 11.4 describes the payment mechanism for Network Upgrades, in which a Generator shall receive a cash refund of the amount paid to the Transmission Provider for Network Upgrades plus interest.

Article 12. Invoice - This Article describes monthly invoice and billing dispute procedures. The Transmission Provider must provide an invoice of the final cost of construction of the Transmission Provider Interconnection Facilities and Network

Upgrades within six months, and in sufficient detail to enable the Generator to compare actual costs with estimates.

Article 13. Emergencies - This Article explains the Transmission Provider's and the Generator's responsibilities when Emergency Conditions arise.

Article 14. Governing Law and Applicable Tariffs - The validity, interpretation, and performance of this Agreement shall be governed by the laws of the state where the Point of interconnection is located, without regard to that state's conflicts of law principles.

Article 15. Notices - This Article contains the addresses at which the Transmission Provider and Generator will receive, among other things, notices, bills and payments.

Article 16. Force Majeure - Force Majeure is defined as any cause beyond a Party's control. Events arising from negligence or intentional wrongdoing are not Force Majeure. Nonperformance due to a Force Majeure event shall not be considered Default.

Article 17. Default - Article 18 defines Default as the failure of either Party to perform any obligation in the time or manner provided in this Agreement. No Default exists as a result of Force Majeure or an act or omission of the other Party. Notice and cure procedures also are described.

Article 18. Indemnity - The Article explains that each Party shall indemnify the other from any and all damages, losses, and claims by or to third parties arising from the other Party's performance of its obligations under this Agreement on behalf of the indemnifying Party. No indemnity will be available in cases of negligence or intentional wrongdoing by the indemnifying Party.

Article 19. Assignment - Written consent ordinarily is required to assign the Agreement, but assignment may be secured without consent if the assignee is an affiliate that meets certain qualifications. No consent is required if a Generator assigns the Agreement for collateral security purposes to aid in Facility financing.

Article 20. Severability - Explains that if a court or Governmental Authority determines that any provision of this Agreement is invalid, void, or unenforceable, such determination shall not invalidate any other provision in this Agreement.

Article 21. Comparability - Parties will comply with all applicable comparability requirements and code of conduct laws, rules and regulations.

Article 22. Confidentiality - This Article describes what constitutes Confidential Information and the protections that will be afforded such information when shared between Parties.

Article 23. Environmental Releases - Describes procedures for notifying the other Party of the release or remediation of Hazardous Substances related to the Facility or the Interconnection Facilities that may be expected to affect the other Party.

Article 24. Information Requirements - This Article describes the requirements for submitting information regarding the electric characteristics of the Parties' respective facilities. Among the information, the Transmission Provider shall provide a monthly status report on construction and installation of Transmission Provider Interconnection Facilities and Network Upgrades.

Article 25. Information Access and Audit Rights - Each Party shall make information available to the other Party necessary to verify costs for which the other Party is responsible under this Agreement and to carry out its obligations and responsibilities under this Agreement.

Article 26. Subcontractors - The Parties may use subcontractors to perform obligations under this Agreement provided that the contractors comply with the applicable terms and conditions of the Agreement and each Party remains liable to the other for the subcontractor's performance. The hiring Party retains all of its obligations under this Agreement.

Article 27. Disputes - This Article explains the dispute resolution and arbitration procedures.

Article 28. Representations, Warranties and Covenants - This Article requires that each Party be organized and qualified to do business in the relevant jurisdiction. Each Party has the Authority to enter into this Agreement, and performance of its duties does not violate or conflict with organizational or formation documents.

Article 29. Operating Committee - The Parties shall convene an Operating Committee, comprising one representative and one alternate from each Party who will also be members of the joint Operating Committee, that will meet at least annually to carry out the duties set forth in this Article.

Article 30. Miscellaneous - This Article contains provisions addressing matters such as rules of interpretation, a prohibition on third-party beneficiaries, and the right to amend the Agreement by mutual agreement.

Appendices - The Agreement contains separate appendices for Interconnection Facilities and Network Upgrades, Time Schedule, Interconnection Details, Standard Generator Interconnection Agreement, Security Arrangement Details, Commercial Operation Date, and Interconnection Guidelines.

2. Standard Generator Interconnection Procedures

Section 1. Definitions - Definitions of terms used in the Interconnection Procedures are provided. (In this summary, defined terms are capitalized.)

Section 2. Scope and Application - The Transmission Provider must follow strict comparability principles. The Interconnection Procedures do not constitute a request for, nor confer a right to receive, transmission service.

Section 3. Interconnection Requests - This section describes interconnection request procedures, including a refundable deposit of $10,000 payable to the Transmission Provider that will be applied toward the cost of the Interconnection Feasibility Study. The Generator may withdraw its request at any time, and if the Generator fails to adhere to all requirements of the Interconnection Procedures, the Transmission Provider shall deem the request to be withdrawn.

Section 4. Queue Position - The queue position is based, in general, on the date and time of receipt of the valid (i.e., complete) Interconnection Request, and is used to determine the order of performing studies and cost responsibility. At the Transmission Provider's option, Interconnection System Impact Studies may be performed serially as requests are received or in clusters.

Section 5. Procedures for Interconnection Requests Submitted Prior to Effective Date of Interconnection Procedures - This section provides for the completion of studies and the finalizing of Interconnection and Operating Agreements that are pending as of the effective date of the Interconnection Procedures.

Section 6. Interconnection Feasibility Study - The Interconnection Feasibility Study shall preliminarily evaluate the feasibility of the proposed interconnection to the Transmission System and will consist of a power flow and short circuit analysis. The

Generator is responsible for the actual cost of the study and any re-studies that may be required.

Section 7. Interconnection System Impact Study - The Interconnection System Impact Study shall evaluate the impact of the proposed interconnection on the reliability of the Transmission System and will consist of a short circuit analysis, a stability analysis, and a power flow analysis. The Generator is responsible for the actual cost of the study and any re-studies that may be required.

Section 8. Interconnection Facilities Study - The Interconnection Facilities Study shall specify and estimate the cost of implementing the conclusions of the Interconnection System Impact Study, including the nature and cost of any Transmission Provider Interconnection Facilities and Network Upgrades needed. It shall also provide an estimate of the time required to complete the construction and installation of these facilities. The Generator is responsible for the actual cost of the study and any re-studies that may be required.

Section 9. Agreements - In order to advance the implementation of its interconnection, the Generator may request the Transmission Provider to offer an Engineering and Procurement Agreement that authorizes the Transmission Provider to begin engineering and procurement of long lead-time items necessary for the establishment of the interconnection.

Section 10. Optional Study - The Generator may request the Transmission Provider to perform a reasonable number of Optional Studies. An Optional Study will consist of a sensitivity analysis and will identify the costs that may be required to provide transmission service or interconnection service based upon the results of the Optional Study.

Section 11. Interconnection and Operating Agreement - When the Transmission Provider delivers the draft Interconnection Facilities Study report to the Generator, the Transmission Provider shall tender a draft Interconnection and Operating Agreement with draft appendices completed to the extent practicable. Procedures and requirements for filing and complying with an unexecuted agreement also are described.

Section 12. Construction of Transmission Provider Interconnection Facilities and Network Upgrades - The Transmission Provider and the Generator shall negotiate a schedule for constructing needed facilities and upgrades. A Generator may request the Transmission Provider to advance the completion of necessary Network Upgrades that are the responsibility of another entity and would not otherwise be completed in time to support the Generator's In-Service Date. However, the Generator must commit to pay any expediting costs and the cost of the upgrades, with such payments to be refunded when the Transmission Provider receives payment from the responsible entity.

Section 13. Miscellaneous - The Interconnection Procedures include a variety of miscellaneous provisions pertaining to: (1) confidential treatment of information provided by the Generator, (2) the Transmission Provider's right to delegate responsibility to subcontractors, (3) the Generator's obligation to pay the actual costs of Interconnection Studies, (4) the Generator's right to request the Transmission Provider to contract with a third party to perform an Interconnection Study, (5) the obligation of the Transmission Provider to pay the Generator liquidated damages, and (6) dispute resolution procedures.

Section 14. Small Generator Interconnection Requests - Small Generators are defined as units of no more than 20 MW or aggregations of interconnecting Facilities at a single Point of Interconnection totaling no more than 20 MW. Although, for Small Generators, the deposit requirement for each of the Interconnection Studies is waived,

Small Generators are responsible for the costs of processing the Interconnection Request and the performance of Interconnection Studies, unless waived. Expedited procedures will be used for Small Generators' Interconnection Requests and Interconnection Studies, but Small Generators will be placed in the same queue as Generators.

Appendices - The Interconnection Procedures include five appendices that provide forms of agreement for the Interconnection Request, the Interconnection Feasibility Study, the Interconnection System Impact Study, the Interconnection Facilities Study, and the Optional Study.

III. PUBLIC REPORTING BURDEN AND INFORMATION COLLECTION STATEMENT

The following collections of information contained in this proposed rule are being submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the Paperwork Reduction Act of 1995. FERC identifies the information provided under Part 35 as FERC-516.

Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The following burden estimate includes the cost of preparing and submitting tariff changes to comply with the Commission's proposed regulation.

Public Reporting Burden: Estimated Annual Burden:

Data Collection FERC-516	Number of Respondents	Number of Responses	Hours Per Response	Total Annual Hours

Reporting	270			
(In place)	145	1	4	580
(Develop)	125	1	31	3,875
Totals	270	1	35	4,455

Total Annual Hours for Collection (reporting + record keeping, (if appropriate)= 4,455 hours (270 respondents (145 x 1 filing x 4 hours for review, clarification or 580 hours) + (125 x 1 x 31 to develop interconnection agreement format or 3,875) = 4,455).

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be:

Annualized Capital/Startup Costs- Staffing requirements to review and prepare an interconnection agreement = $222,750 ($29,000 (145 respondents x $200 (4 hours @ $50 hourly rate) + $ 193,750 (125 respondents x $1,550 (31 hours @ $50 hourly rate)

Annualized Costs(Operations & Maintenance). The cost per respondent is equal to $ 107 (145 respondents who agreements in place), $718 (125 respondents who have to develop documentation).

The OMB regulations require OMB to approve certain information collection requirements imposed by agency rule. 5 CFR 1320.11. Accordingly, pursuant to OMB regulations, the Commission is providing notice of its proposed information collections to OMB.

Title: FERC-516, Electric Rate Schedule Filings.

Action: Proposed Data Collections.

OMB Control No.: 1902-0096

The applicant shall not be penalized for failure to respond to this collection of

information unless the collection of information displays a valid OMB control number.

Respondents: Business or other for profit.

Frequency of Responses: One-time implementation.

Necessity of Information: The proposed rule would revise the requirements contained in 18 CFR part 35. The Commission is seeking to establish standardized interconnection procedures and agreements. In particular, the Commission will propose this proposed rule standardized interconnection agreements and procedures that public utilities must adopt. The proposed rule would require that each public utility that owns, operates or controls transmission facilities participate in one-time filings incorporating the agreement and procedures into their open access transmission tariffs. Internal Review: The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements. The Commission's Office of Markets, Tariffs and Rates will use the data included in filings under Section 203 and 205 of the Federal Power Act to evaluate efforts for the interconnection and coordination of the U.S. electric transmission system and to ensure the orderly implementation of the interconnection procedures and agreement as well as for general industry oversight. These information requirements conform to the Commission's plan for efficient information collection, communication, and management within the electric power industry.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 [Attention: Michael Miller, Capital Planning and Policy Group, Phone: (202) 208-1415, fax: (202)208-2425, E-mail: michael.miller@ferc.gov.]

For submitting comments concerning the collection of information(s) and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202)395-7318, fax: (202)395-7285].

IV. ENVIRONMENTAL STATEMENT

The Commission concludes that promulgating the proposed rule would not present a major federal action having a significant adverse impact on the human environment under the Commission's regulations implementing the National Environmental Policy Act.[39] The proposed rule falls within the categorical exemption provided in the Commission's regulations for approval of actions under §§ 203 and 205 of the Federal Power Act relating to provided for the filing of schedules containing all rates and charges for any transmission or sale subject to the Commission's jurisdiction, plus the classification, practices, contracts and regulations that affect rates, charges, classifications and services.[40] Consequently, neither an environmental assessment nor an environmental impact statement is required.

V. REGULATORY FLEXIBILITY ACT

The Regulatory Flexibility Act (RFA)[41] requires rulemakings to contain either a description and analysis of the effect that the proposed rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities. The regulations proposed here impose requirements only on

---

[39] 18 CFR Part 380.

[40] 18 CFR 380.4(a)(15)(16).

[41] 5 U.S.C. 601-612 (1994).

interstate transmission providers, which are not small businesses, and, these requirements are, in fact, designed to benefit all customers, including small businesses. Accordingly, pursuant to section 605(b) of the RFA, the Commission hereby certifies that the proposed regulations will not have a significant adverse impact on a substantial number of small entities.

VI. COMMENT PROCEDURES

The Commission invites interested persons to submit comments, data, views and other information concerning matters set out in this notice.

To facilitate the Commission's review of the comments, commenters are requested to provide an executive summary of their positions. Commenters are requested to identify each specific issue posed by the NOPR that their discussion addresses and to use appropriate headings that clearly identify the relevant IA and IP sections. Additional issues the commenters wish to raise should be identified separately. The commenters should double-space their comments.

Comments may be filed on paper or electronically via the Internet and must be received by the Commission by [insert date that is 45 days after publication in the FEDERAL REGISTER]. Comments should not exceed 30 double-spaced pages and should include an executive summary. Those filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426 and should refer to Docket No. RM02-1-000.

Comments filed via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's website at www.ferc.gov and click on "e-Filing," and then follow the

instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt of comments.

User assistance for electronic filing is available at 202-208-0258 or by E-Mail to efiling@ferc.fed.us. Comments should not be submitted to the E-Mail address. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, N.E., Washington D.C. 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the RIMS link. User assistance for RIMS is available at 202-208-2222, or by E-mail to RimsMaster@ferc.fed.us .

VIII. DOCUMENT AVAILABILITY

In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (http://www.ferc.gov) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

- - CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.
- - CIPS can be accessed using the CIPS link or the Energy Information Online icon.

The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

- - RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208-2222 (E-Mail to WebMaster@ferc.fed.us) or the Public Reference at (202) 208-1371 (E-Mail to public.referenceroom@ferc.fed.us).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

List of Subjects in 18 C.F.R. part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Deputy Secretary.

In consideration of the foregoing, the Commission proposes to revise Part 35, Chapter I, Title 18 of the Code of Federal Regulations, as follows.

PART 35 – FILING OF RATE SCHEDULES

1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352.

2. Add § 35.28(f) to read as follows:

§ 35.28 Nondiscriminatory open access transmission tariff.

* * * * *

(f) Standardized interconnection agreement and procedures.

(1) Every public utility that is required to have on file a non-discriminatory open access transmission tariff under this section must amend such tariff by adding the standardized interconnection agreement and procedures contained in Order No. ____, FERC Stats. & Regs. ¶ _____ (Final Rule on Interconnection) or such other interconnection agreement and procedures as may be approved by the Commission consistent with Order No. ___, FERC Stats. & Regs. ¶ _____ (Final Rule on Interconnection).

(i) The amendment required by the preceding subsection must be filed no later than (60 days after the issuance of the final rule).

(ii) Any public utility that seeks a deviation from the standardized interconnection agreement and procedures contained in Order No. ____, FERC Stats. & Regs. ¶ _____ (Final Rule on Interconnection), must demonstrate that the deviation is consistent with the principles of Order No. ____ , FERC Stats. & Regs. ¶ _____ (Final Rule on Interconnection).

(2) The non-public utility procedures for tariff reciprocity compliance described in paragraph (e) are applicable to the standardized interconnection agreement and procedures.

[NOTE: THE ATTACHED ATTACHMENTS WILL NOT BE PUBLISHED IN THE CODE OF FEDERAL REGULATIONS]